IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CRIMINAL REVISION APPLICATION NO. 24 OF 2006

Suryakant Vaman Shirodkar,
House No.271, Feira-Alto,
Mapusa, Goa. .... Petitioner

Versus

1. Ghanashyam Anant Nachinolkar,
resident of House No. 88,
Gaunsawaddo, Mapusa, Bardez, Goa. .... Respondent

Shri S.D. Lotlikar, Sr. Adv. with Shri M. D'Souza, Advocate for the Petitioner.

Shri Sudin Usgaonkar, Advocate for Respondent No.1.

CORAM: **N. A. BRITTO, J.**

DATE: **26th July, 2006**

ORAL ORDER

Heard Shri Lotlikar, the learned Senior Counsel on behalf of the applicant and Shri Sudin Usgaonkar, the learned Counsel on behalf of the respondent no.1.

2. Apparently, the dispute is as regards the property surveyed under chalta no.17 and P.T. Sheet no.110 of Mapusa. There is no dispute that in the said chalta number there are two buildings belonging to Suryakant Shirodkar and Anjani Shirodkar/party no.1 before the learned SDM. There is also no dispute that Ghanashyam Nachinolkar, respondent no.1 herein and now party no.2 before the SDM had filed a civil suit for injunction in respect of the said property and the said suit has been decided against the said respondent no.1. The said Shirodkar's /party no.1 on or about 3/11/1999 filed an application to the Sub-Divisional Magistrate stating that they were the owners in possession of the said property and that one house which was rented out to the Ghanashyam Nachinolkar for running a flour and rice mill had collapsed about 29 years back. The applicants further stated that they had purchased the said property by two deeds dated 8/04/1970 and 30/11/1970 and that on or about 26/12/1999 one Anil Sony Kerkar had entered the said property with some labourers and started cleaning the bushes and when he was questioned by the said Shirodkar, he claimed possession of the same. A police report was called by the learned SDM and based on the same an order under Section 145(1) was issued to the said Kerkar. The said Kerkar appeared before the learned SDM with an application dated 4/04/2000 and stated that he had gone to

the site upon the instructions of Ghanashyam Nachinolkar, respondent no.1 herein and that it is the said Ghanashyam Nachinolkar who had told him to see a buyer as he was intending to sell the property and therefore he had gone to clean the property by cutting bushes. In other words, the said Kerkar had made it clear that he had interfered with the property at the behest of Ghanashyam Nachinolkar, respondent no.1, herein. The learned SDM after considering the said application of the said Kerkar, issued another order dated 17/12/1999 by which the said Ghanashyam Nachinolkar, respondent no.1 herein was directed to show cause as regards the dispute, in relation to the said property regarding which there was likelihood of breach of peace. It appears that subsequently the said Shirodkar also made an application to implead Ghanashyam Nachinolkar which was rejected by order dated 19/10/2001.

3. As against the above order dated 19/10/2001 respondent no.1 herein preferred a revision before the Court of Sessions, Panaji and the same was allowed by the learned Additional Sessions Judge by order dated 3/09/2005. In allowing the revision the learned Additional Sessions Judge observed that the very basis for the Magistrate (SDM) who assumed jurisdiction was his subjective satisfaction that a dispute was likely to cause

breach of peace existed and that it was also incumbent upon the Magistrate to have stated the ground of his being so satisfied, in the order and the failure of the learned Magistrate to record such satisfaction violated the ingredients of Section 145 (1) of the Code. The learned Additional Sessions Judge further observed that the learned Executive Magistrate (SDM) had not given any reasons while issuing order dated 13/07/2000 under Section 145 (1) of the Code against the applicant (Ghanashyam Nachinolkar). The learned Additional Sessions Judge further observed that it was not understood as to what had made the learned Executive Magistrate to come to the conclusion that the applicant (Ghanashyam Nachinolkar) was forcibly interfering with the suit property in possession of respondent no.2 (Suryakant Shirodkar) by digging and trying to construct new construction.

4. On behalf of the petitioners/Shirodkars it is contended that the learned SDM has recorded his satisfaction in order dated 17/12/1999 passed under Section 145(1) of the Code even before Ghanashyam Nachinolkar, respondent no.1 herein was sought to be made a party to the said proceedings by the petitioners and the said satisfaction could not have been interfering with by the learned Additional Sessions Judge in revisional jurisdiction. It is further submitted on behalf of the petitioners that there is

a dispute raised by Ghanashyam Nachinolkar as regards the possession of the said property under chalta no. 17 which dispute was required to be decided by the learned SDM and as such the proceedings should have continued so that the learned SDM gives a finding as to who is in possession of the chalta no.17. On the other hand, it has been submitted by Shri Usgaonkar, the learned Counsel on behalf of respondent no.1 that the said Kerkar having stated before the learned SDM that he would not interfere with the said property there was no cause of action to continue the proceedings against respondent no.1 herein.

5. Admittedly the preliminary order under Section 145(1) of the Code came to be made on 13/07/2000 for the second time by the learned SDM when he found that actual dispute as regards possession of chalta no.17 was in fact not between the said Kerkar and the petitioners herein but it was between the petitioners on one hand and respondent no.1, herein. It is obvious that respondent no.1 herein is also claiming right to possession of the said property, presumably because chalta no.17 has been recorded in the survey records in the name of respondent no.1 and at one time respondent no.1 had a rice mill in it which admittedly at present is in ruins and this inspite of the fact that previously respondent no.1 had already lost

the civil suit for injunction filed by him. The preliminary order dated 13/07/2000 was in fact not challenged by the respondent no.1 herein in the revision before the court of Sessions, Panaji but what was in fact challenged was the subsequent order dated 19/10/2001 by which respondent no.1 was impleaded to the proceedings before the learned SDM. The learned SDM did record his satisfaction that there was a dispute between the petitioners/Shirodkars and respondent no.1/Nachinolkar as regards the possession in relation to chalta no.17 in para 2 of the said order dated 13/07/2000 issued under Section 145(1) of the Code. In fact the learned SDM had also taken note in the order dated 3/09/2005 that there were also 107 proceedings pending against respondent no.1 herein which gave a clear indication that there was a dispute as regards the possession of the property which could result in breach of peace.

6. The learned SDM having recorded his satisfaction in preliminary order dated 13/07/2000 and the same not being the subject matter of challenge in the revision filed by respondent no.1 herein, the same could not have been interfered with by the learned Sessions Judge.

7. In the above view of the matter this petition deserves to succeed. Consequently the order dated 3/09/2005 of the learned Additional Sessions Judge, Panaji is hereby set aside. Consequently both the parties are hereby required to appear before the learned SDM on 17/08/2006 at 2.30 p.m. for further proceedings in case no. MAG/145 Cr.P.C./1/99.

N. A. BRITTO, J.

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